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MAY 13 2009

OFFICE OF PETITIONS

In re Application of :
Awakura et al. : DECISION ON PETITION
Application No. 10/663,657 :
Filed: September 17, 2003 :
Atty Docket No. 501.43143X00 :

This is in response to the PETITION FOR WITHDRAWAL OF ERRONEOUS HOLDING OF ABANDONMENT filed December 7, 2007. Receipt of the status inquiry filed September 4, 2008 is acknowledged. The petition was recently forwarded to the undersigned for consideration.

The petition is **DISMISSED**.

Any request for reconsideration pursuant to § 1.181 must be filed within **TWO (2) MONTHS** of the date of this decision in order to be considered timely. See 37 CFR §1.181(f). Extensions of time under §1.136(a) are not permitted.

The above-identified application became abandoned for failure to file a response to the restriction requirement mailed April 16, 2007. This restriction requirement set a one-month period for reply with extensions of time obtainable under § 1.136(a). No response was received and no extension of time was obtained. Accordingly, the application became abandoned effective May 17, 2007. A courtesy Notice of Abandonment was mailed on November 27, 2007.

In response, applicants timely filed the instant petition. Applicants petition to withdraw the holding of abandonment on the basis that the Office action was not received. Practitioner

states that he has reviewed the computer records and the file for the above-identified application and it reveals no indication of receipt of the Office action. Practitioner states that the petition includes a copy of the November 16, 2007 page of this Docket Book, "which represents the end of the six month statutory period for response." In support of nonreceipt of the Office action, practitioner points out that the image file wrapper shows two copies of the Office action and that such is unusual and in all probability, indicative of the fact that the Office action was not properly mailed to the office of the undersigned attorney.

A review of the application file reveals no irregularities in the mailing of the Office action mailed April 16, 2007. Thus, there is a strong presumption that the correspondence was properly mailed to the applicants at the correspondence address of record. The duplicate entry of the restriction requirement in the image file wrapper is not such an irregularity as to overcome this presumption. The restriction requirement is addressed to the correspondence address of record. Further, the PALM records for this application support a conclusion that a restriction requirement was mailed in this application on April 16, 2007. In the absence of demonstrated irregularities in mailing of the restriction, petitioner must submit evidence to overcome this presumption. The following showing is required:

Practitioner must state that the Office action was not received at the correspondence address of record, and that a search of the practitioner's record(s), including any file jacket or the equivalent, and the application contents, indicates that the Office action was not received. A copy of the record(s) used by the practitioner where the non-received Office action would have been entered had it been received is required.

A copy of the practitioner's record(s) required to show non-receipt of the Office action should include the master docket for the firm. That is, if a three month period for reply was set in the nonreceived Office action, a copy of the master docket report showing all replies docketed for a date three months from the mail date of the nonreceived Office action must be submitted as documentary proof of nonreceipt of the Office action. If no such master docket exists, the practitioner should so state and provide other evidence such as, but not limited to, the following: the

application file jacket; incoming mail log; calendar; reminder system; or the individual docket record for the application in question.

The showing of nonreceipt is not sufficient. Practitioner describes the docketing system, states that the Office action was never received and states that a search of the file and docket records supports such a conclusion. However, practitioner only submits a docket page for the replies of November 16, 2007. Yet, in this instance, the relevant date is October 16, 2007. The response was due, without extension of time, within one month or by May 16, 2007. The maximum extendable period for response was five months or by October 16, 2007. Thus, November 16, 2007 was beyond the period for reply. As such a master docket record for November 16, 2007 is not persuasive evidence of nonreceipt of the Office action mailed April 16, 2007.

If applicants cannot provide persuasive evidence of non-receipt of the Notice, applicants may submit a petition to revive pursuant to § 1.137.

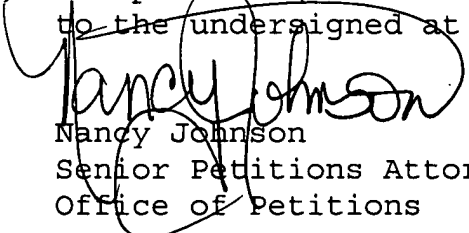
Further correspondence with respect to this decision should be addressed as follows:

By mail: Mail Stop Petition
 Commissioner for Patents
 P.O. Box 1450
 Alexandria, VA 22313-1450

By fax: (571) 273-8300
 ATTN: Office of Petitions

By hand: Customer Service Window
 Randolph Building
 401 Dulany Street
 Alexandria, VA 22314

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3219.



Nancy Johnson
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